

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

TOM PUTMAN  
R&ROG

OFFICE OF  
MANAGING DIRECTOR

February 3, 2005

Jerry DeCiccio  
Chief Financial Officer  
GTC Telecom, Inc.  
3151 Airway Ave., Suite P-3  
Costa Mesa, CA 92626

Re: GTC Telecom, Inc.  
Request for Waiver of FY 2003 Regulatory Fee  
Fee Control No. 00000RROG-04-057

Dear Sirs:

This is in response to your request dated April 20, 2004, filed on behalf of GTC Telecom, Inc., that the Commission's Office of Managing Director reconsider its decision denying GTC Telecom's request for waiver and refund of the fiscal year (FY) 2003 regulatory fee on the grounds of financial hardship. See Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, to Drew N. Hamilton (dated Mar. 23, 2004) (*GTC Telecom Letter*). Our records reflect that you paid the \$18,936.77 regulatory fee.

In support of your initial request for waiver on the grounds of financial hardship (dated January 12, 2004), you provided financial documentation covering the twelve-month period ending June 30, 2003 (*January 12 Submission*). This information included a balance sheet, statements of operations and cash flows, and a summary of compensation paid to principals. For the period ending June 30, 2003, you showed a net loss of \$29,106.00. You also stated that during the most recent fiscal quarter ending September 30, 2003, GTC Telecom experienced a net loss of \$342,436.00. In a supplemental submission dated February 4, 2003 (*February 4 Submission*), you provided updated information for some of the financial documentation contained in the *January 12 Submission*. This information was recalculated to cover the twelve-month period ending September 30, 2003, which period of time corresponds to FY 2003.

In the *GTC Telecom Letter*, we explained that, in establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station

lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

We found that the *February 4 Submission* showed that for FY 2003, GTC Telecom experienced a net loss of \$462,466.00. We also found that the *January 12 Submission* indicated, however, that for the twelve-month period ending June 30, 2003 (the last nine months of which fall in FY 2003), GTC Telecom claimed expenses for depreciation and amortization of \$149,248.00, and paid a total of \$686,467.00 in compensation to its principals, and thus had money from which to pay the fees.<sup>1</sup> We stated that because the reported losses upon which you relied resulted from depreciation and payments to corporate officers, GTC Telecom had failed to make a compelling showing of financial hardship. We therefore denied your request for waiver and refund of GTC Telecom's regulatory fee for FY 2003.

In your request for reconsideration, you assert that the \$332,018.00 line item amount identified as "Waiver of payroll tax penalties and interest" on the statement entitled "GTC Telecom Calculation of Income Statement for Year: October 1, 2002 – September 30, 2003 ([dated] February 3, 2004)" (*October 1, 2002 through September 30, 2003 Income Statement*) (which GTC Telecom submitted in connection with the initial waiver request) should be excluded from the calculation of GTC Telecom's income because it is "a non-cash item that reversed expense from previous periods[.]" In a subsequent communication, you explained that the line item is meant to reverse an expense for payroll tax penalties and interest that GTC Telecom claimed, but did not actually pay, in previous periods. You assert that the amount, as such, does not represent cash flow and should be excluded from calculating GTC Telecom's income for purposes of the FY 2003 regulatory fee.

You also maintain that the \$40,000.00 line item amount identified as "Other Annual Compensation" paid to Paul Sandhu on the statement entitled "Summary Compensation Table" (*July 1, 2002 through June 30, 2003 Compensation Table*) (which, among other things, identifies the compensation for GTC Telecom's executive employees for the period from July 1, 2002 through June 30, 2003, and which GTC Telecom submitted in connection with the initial waiver request) should be reduced by \$15,000.00 for purposes of calculating payments to GTC Telecom's principals to conform with the time period covered by the *October 1, 2002 through September 30, 2003 Income Statement* because that amount was paid between July 1, 2002 and September 30, 2002. You state that "[n]o additional 'Other Annual Compensation' was paid between July 1, 2003 and September 30, 2003" to Mr. Sandhu.

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<sup>1</sup> We noted that with respect to the compensation to principals, the Commission does not distinguish between salaries and discretionary payments such as dividends in considering the total amount of funds available to pay regulatory fees made obligatory by federal law.

You further assert that the compensation paid to Mark Fleming as reflected on the *July 1, 2002 through June 30, 2003 Compensation Table* should be reduced by \$37,159.50 for purposes of calculating payments to GTC Telecom principals to comport with the time period covered by the *October 1, 2002 through September 30, 2003 Income Statement* because the amount was paid between July 1, 2002 and September 30, 2002. You state that no additional salary was paid to Mr. Fleming between July 1, 2003 and September 30, 2003. In a subsequent communication, you state that the compensation paid to the only other principals of GTC Telecom during the October 1, 2003 through September 30, 2003 time period, i.e., Mr. Clemons and Mr. DeCiccio, was \$167,200.00 and \$158,000.00, respectively. You state that when GTC Telecom's income as reflected on the *October 1, 2002 through September 30, 2003 Income Statement* is adjusted to exclude the payroll tax penalties and interest and to reflect Mr. Sandhu's and Mr. Fleming's compensation for the twelve-month period ending September 30, 2003, GTC Telecom suffered a net financial loss of \$794,484.00 which was only partially offset by depreciation and payments to principals.

We find that you have not provided sufficient justification to support exclusion from income of the \$332,018.00 line item identified as "Waiver of payroll tax penalties and interest" on the *October 1, 2002 through September 30, 2003 Income Statement* because inclusion in expenses of some or all of the same payroll tax penalties and interest may have supported waivers of regulatory fees in prior years. Allowing GTC Telecom to exclude from income an amount for purposes of a waiver of the FY 2003 regulatory fees when GTC Telecom may have included in expenses some portion of the same amount in a prior year or years in which GTC Telecom received a waiver of the regulatory fees on the grounds of financial hardship may thereby result in GTC Telecom's improperly receiving multiple fee waivers based upon inconsistent or conflicting use of the same data. Given your statement that the line item at issue here for payroll tax penalties and interest reverses expenses that GTC Telecom claimed in previous periods, but did not in fact incur, and given that the Office of Managing Director granted GTC Telecom's previous requests for waiver of the FYs 2001 and 2002 regulatory fees on the grounds of financial hardship, the record suggests that GTC Telecom may have received a waiver or waivers of the regulatory fees based at least in part on the same payroll tax penalty and interest figures underlying GTC Telecom's instant waiver request.<sup>2</sup> Therefore, because

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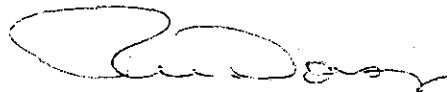
<sup>2</sup> See Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, to Gerald A. DeCiccio (dated Jan. 31, 2003) (granting GTC Telecom's request for waiver of the FY 2001 regulatory fee on the grounds of financial hardship); Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, to Gerald A. DeCiccio (dated June 2, 2003) (granting GTC Telecom's request for waiver of the FY 2002 regulatory fee on the grounds of financial hardship). Although you do not indicate in which years GTC Telecom claimed as expenses the tax penalties and interest at issue here, the financial documentation underlying GTC Telecom's requests for waiver of the FYs 2001 and 2002 regulatory fees contains line items that may reflect such expenses. See, e.g., GTC Telecom Corp. and Subsidiaries Consolidated Statements of Cash Flows [for Years ending June 30, 2002 and 2001] (line item for "Accrued payroll and related taxes"); GTC Telecom Corp. and Subsidiaries Consolidated Statements of Cash Flows

GTC Telecom has not adequately explained its reliance on a reversal of expenses claimed but not paid in earlier periods, we deny your request for exclusion of the \$332,018.00 payroll tax penalties and interest from income for purposes of granting a waiver of FY 2003 regulatory fees.

Given that we deny your request for exclusion of the payroll tax penalties and interest from income, even if we grant your request to recalculate the compensation paid to GTC Telecom's various principals to conform with the time period covered by the *October 1, 2002 through September 30, 2003 Income Statement* (and thereby reduce the compensation paid to principals for purposes of GTC Telecom's waiver request from \$686,467.00 to \$645,182.50), we find that GTC Telecom had sufficient funds to pay the \$18,936.77 FY 2003 regulatory fee (i.e., the \$462,466.00 net loss on the *October 1, 2002 through September 30, 2003 Income Statement* adjusted to reflect depreciation and amortization (\$149,248.00) and salaries paid to GTC Telecom principals (\$645,182.50) as amounts available to pay the fees equals \$331,964.50). We therefore deny your request for a waiver and refund of the \$18,936.77 regulatory fee for FY 2003.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



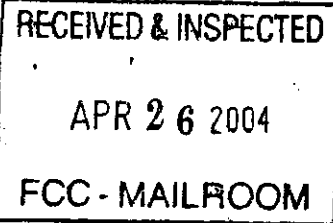
6 Mark A. Reger  
Chief Financial Officer

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[for Years ending June 30, 2001 and 2000] (line items for "Accounts payable and accrued expenses" and "Accrued payroll and related taxes").



00000RR06-04-057



## Leading the way in Telecommunications

April 20, 2004

Federal Communications Commission  
445 12<sup>th</sup> St SW  
Attn: Managing Director  
Room 8-B438  
Washington DC 20554

Attn: Regulatory Fee Waiver Reduction Request

To Whom It May Concern:

I am replying to a letter from the FCC, dated March 23, 2003, denying GTC Telecom's Regulatory Fee Waiver Reduction Request. Therefore, I am requesting to file a Petition for Reconsideration for fiscal year 2003 Regulatory Fee in the amount of \$18,936.77.

Previously, GTC Telecom submitted a schedule that modifies GTC Telecom's Income Statement for the fiscal year ending June 30, 2003, to match the FCC's fiscal year from October 1, 2002 - September 30, 2003. Accordingly, this schedule showed a net loss of \$462,466. If a non-cash item that reversed expense from previous periods were excluded, "Waiver of payroll tax penalties and interest" of \$332,018, this would have resulted in a net loss of \$794,484 for the Income Statement for the fiscal year ending September 30, 2003.

In addition, for the fiscal year ending June 30, 2003, GTC Telecom incurred \$149,248 of depreciation and amortization and \$686,467 in compensation to its principals. In similar fashion to match the FCC's fiscal year from October 1, 2002 - September 30, 2003, compensation to principals is reduced by the following items:

- \$15,000.00 of Paul Sandhu's "Other Annual Compensation" was paid between July 1, 2002 and September 30, 2002. No additional "Other Annual Compensation" was paid between July 1, 2003 and September 30, 2003.
- \$37,159.50 represents the prorata portion of Mark Fleming's salary paid between July 1, 2002 and September 30, 2002. This is calculated by dividing his salary of \$99,092 for the fiscal year ended June 30, 2003 by the 8 months that he was employed during the fiscal year ended June 30, 2003 (see footnote "7" in the previously enclosed "Summary Compensation Table" regarding Mark Fleming's resignation as of February 28, 2003). No additional salary was paid to Mark Fleming between July 1, 2003 and September 30, 2003.

The sum of the two above items (\$52,159.50) is adjusted from GTC Telecom's \$686,467 of compensation to its principals for the fiscal year ending June 30, 2003 to arrive at \$634,308 for the fiscal year ending September 30, 2003. When this is added to the \$149,248 of depreciation and amortization, the result is \$783,556 of compensation to principals and depreciation and amortization expense. This amount is lower than the net loss of \$794,484 calculated in the second paragraph above.

Therefore, GTC Telecom believes that it qualifies for the Regulatory Fee Waiver.

Thank you again for your help in processing our request. If you have any questions, please feel free to call me.

Sincerely,

Drew Hamilton  
Controller, GTC Telecom

MAY 12 2004

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

JAN 31 2003

Gerald A. DeCiccio, CFO  
GTC Telecom  
3151 Airway Ave., Suite P-3  
Costa Mesa, California 92626

Re: Request for Waiver of FY 2001 and FY  
2002 Regulatory Fees  
Fee Control No. 00000RROG-02-101

Dear Mr. DeCiccio:

This is in response to your request to waive and refund payment of GTC Telecom's (GTC) Fiscal Year (FY) 2001 regulatory fee of \$7,164.00 and FY 2002 regulatory fee of \$13,928.23. Our records indicate that you have paid these fees.

You argue that the regulatory fees will be a financial hardship because GTC has not yet made a profit and its net income less depreciation continues to be negative. In support, you submit consolidated balance sheets, consolidated statements of operations, consolidated statements of cash flows, and summary compensation tables for GTC and its subsidiaries for years ending June 30, 2001 and 2002 (and in the case of the compensation table for years ending June 30, 2000 and June 30, 1999 as well).

In establishing its regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship on a licensee. Thus, the Commission decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). The Commission further held that regulatees can establish financial need by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

10 FCC Rcd at 12761-12762.



0000000000-02-101

Leading the way in Telecommunications

September 24, 2002

Federal Communications Commission  
445 12<sup>th</sup> St SW  
Attn: Managing Director  
Rbom 1A625  
Washington DC 20554

Atty: Regulatory Fee Waiver Reduction Request

To Whom It May Concern:

I am writing to request a hardship waiver of GTC Telecom's 2002 FCC Regulatory Fee of \$13,928.32 and 2001 FCC Regulatory Fee of \$7,164.00. As requested, I have enclosed GTC Telecom financials for the last 2 years. As a public company, GTC Telecom has not yet made a profit and our Net Income less Depreciation continues to be negative. GTC Telecom has not paid any dividends since our inception.

As requested, I have enclosed the compensation for GTC Telecom's executive employees from our public filings.

Please contact me regarding any relevant information pertaining to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. DeCiccio", written over a horizontal line.

Gerald A. DeCiccio  
VFO  
GTC Telecom

In determining whether a licensee has sufficient revenues to pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, and payments to principals reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

For the Year ended June 30, 2001, GTC's consolidated statements of cash flow show a net loss of \$2,832,258 and depreciation and amortization of \$220,390. GTC's summary compensation table shows total compensation to principals for 2001 as being \$1,299,116. Because GTC's net loss for FY 2001 (\$2,832,258) is greater than the sum of depreciation and amortization and total compensation to principals (\$1,519,506), we find that you present a compelling case of financial hardship for 2001 and grant your request for waiver of GTC's regulatory fee for FY 2001. Accordingly, we will refund your payment of \$7,164.00 as soon as practicable.

For 2002, GTC's consolidated statements of cash flow show a net loss of \$1,311,667 and depreciation and amortization of \$237,035. GTC's summary compensation table shows total compensation to principals for 2002 as being \$2,045,165. Although GTC showed a net loss for 2002 (\$1,311,667), this loss resulted from the combination of the deductions for depreciation and amortization and total compensation paid to principals (\$2,282,200). Thus, GTC had money from its deductions for depreciation and amortization and its payments to principals from which it could pay the fee. In these circumstances, we find that you do not present a compelling case of financial hardship for FY 2002. Accordingly, we deny your request for waiver and refund of GTC's regulatory fee of \$13,928.32 for FY 2002. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger  
Chief Financial Officer